

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPAOW No.27/1994

Date of order: 28 .04.2016

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| 1 | Competent Authority Entrance Examinations J&K Jammu through Sh. B.A Shah Registrar Competent Authority. |
| 2. | Controller of Examinations Competent Authority Entrance Examinations J&K Jammu,, New Secretariat Jammu. |
| | Appellants. |
| | Vs. |
| 1. | Mahesh Kumar Raina S/O Sh. Jia Lal Raina R/O Manwa Tehsil Bhaderwah District Doda. |
| 2. | State of J&K through Chief Secretary J&K Jammu |
| | Respondents. |
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Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge
Hon'ble Mr. Justice B.S.Walia, Judge.

Appearing counsel:

For the Appellant(s)	: Mr. D.C.Raina Advocate General with M/s Ravinder Gupta AAG & Amit Gupta Dy.AG
For the Respondent(s)	: None

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| i/ | Whether to be reported in Press/Media | : | Yes |
| ii/ | Whether to be reported in Digest/Journal | : | Yes |
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N.Paul Vasanthakumar, CJ

1. A Division Bench of this Court by order dated 15.03.1994 while admitting the appeal and noticing the sustainability of the order of learned Single Judge, which was impugned before the Division Bench, referred the matter before the Full Bench taking note of the judgment of Division Bench rendered earlier in LPA No. 261/1992 titled Naresh Singh vs. State of Jammu and Kashmir and others dated 24.11.1993. The Division Bench while making reference has observed as follows:

“We are prima facie in agreement with the learned Single Judge that a candidate, who has acted diligently and done all that was necessary could not be denied consideration under the reserved category to which he/she admittedly belong. We accordingly feel that besides the questions formulated by the appellants in the Memo of Appeal, one of the questions that would additionally arise would be whether the writ petitioner could be disentitled for consideration under the reserved category in view of the admitted fact that the Authority competent to issue the certificate had failed in its obligation to decide the matter within fifteen days and also in view of the fact that the candidate had done all that was necessary and possible in the circumstances of the case.....”

2. Consequent to the said reference made, a Full Bench was initially constituted by the Chief Justice on 25.04.1994. The said Full Bench constituting three Judges ordered listing of the matter again after getting orders from the Chief Justice as one of the Judges constituting the Full Bench being part of the earlier Division Bench in Naresh Singh’s case (the judgment of which was the cause of reference) and the matter was again placed before the Chief Justice for re-constitution of the Full Bench in which that Hon’ble Judge is not a member.

3. On 30.04.1994, the Chief Justice constituted another Full Bench. Thereafter, the matter was listed after more than six years on 10.11.2000 and the Full Bench directed listing of the matter for hearing again from 04.12.2000. The matter was not listed for hearing before the Full Bench all these years and was listed for hearing only on 04.04.2016 and the same was heard by us.

4. The case filed by the 1st respondent/writ petitioner before the Writ Court was seeking admission to MBBS/BDS Course for academic session 1993-94 for which a notification was issued on 30.08.1993 fixing the last date for submission of application form by 15.09.1993. The first respondent applied before the last date. Admit card was issued to the 1st respondent for appearing in the entrance examination and he appeared in the entrance examination on 9th and 10th of October 1993 at Jammu. The 1st respondent belongs to reserved category (OBA) (Resident of Backward Area) and he could get the certificate only on 30.09.1993 even though he applied for the certificate before the last date of submitting his application form. The application seeking OBA certificate was rejected by the Deputy Commissioner Doda on 26.08.1993. The first respondent filed an appeal before the Divisional Commissioner, Jammu on 03.09.1993 which was allowed on 20.09.1993 pursuant to which Deputy Commissioner, Doda issued the requisite certificate on 30.09.1993. The 1st respondent on 11.09.1993 made a representation to the 2nd appellant along with OBA certificate through registered post requesting for consideration of his candidature in the reserved category instead of general category which was received by the 2nd appellant before finalizing the selection. No reply having been received from the 2nd appellant and his name having not

been considered in reserved category, the 1st respondent filed writ petition contending that the appellants are under legal obligation to consider his claim for admission to MBBS/BDS Course for the session 1993-94 on the basis of the certificate issued by Deputy Commissioner, Doda dated 30.09.1993 and a direction be issued to include and consider his claim for admission in reserved category (Other Backward Area) instead of Open Merit category for admission to MBBS/BDS Course for the session 1993-94.

5. In the objections filed by the appellants before the Writ Court it was stated that the 1st respondent (writ petitioner) was not in possession of the category certificate (OBA) on the last date fixed in the notification that was 15.09.1993 and he applied for consideration in Open Merit category and therefore, he is not entitled to seek relief as prayed for in the writ petition and if the prayer is allowed, it will alter the conditions of eligibility and the candidates who may have possessed the qualification/certificate on or before the last date may get prejudiced. It was also mentioned in the objections that the candidate seeking consideration under the categories identified under SRO 272 of 1982 dated 03.07.1982 have to submit the category certificate along with application form and no under process certificate will be entertained and the candidate will be considered under the Open Merit category if otherwise eligible.

The notification also required the production of certificate along with the application form. It is also mentioned in the objections that the last date being 15.09.1993 and the certificate of the petitioner admittedly issued only on 30.09.1993, the writ petitioner was not in possession of the said certificate on the last date fixed for submitting the application form and therefore, he was considered under the Open Merit category.

6. The Writ Court considered the said contentions and noticed that the 1st respondent was diligently following his case for grant of certificate before the last date was over and merely because the Deputy Commissioner, Doda committed an error in law by denying the certificate, the 1st respondent cannot be faulted, more particularly when the result of the entrance examination has not been declared till the receipt of the category certificate sent by the 1st respondent to the 2nd appellant. The Writ Court distinguished the earlier order made in OWP No.732 of 1992 dated 17.11.1992 wherein it was held that, till the time the result was declared, the candidate has not submitted the requisite certificate and he came to the Court after declaration of the result for demanding his consideration in the reserved category and in the present case, well before the last date prescribed for submission of application form, respondent had started taking effective steps and has knocked one door after another for obtaining the certificate and if in the

process, he got involved and he having sent the certificate before finalizing the selection, he could not be blamed as equitable considerations are heavily in favour of the 1st respondent and relief cannot be denied to him. The writ court issued direction to the appellants to consider the 1st respondent in reserved category of Other Backward Area along with other eligible candidates in that category.

7. The order of the Writ Court was not stayed during the pendency of this L.P. appeal as the Division Bench was prima facie of the view that the learned Single Judge has given a right judgment and having regard to the earlier Division Bench Judgment in Naresh Singh's case, as stated supra, referred the matter for consideration by the Full Bench.

8. As no one has chosen to appear for the 1st respondent, It is not known as to whether the 1st respondent was given admission by considering his claim. After 22 years, the said direction if not considered cannot be ordered to be complied with as admission was sought was for the academic session 1993-94. Having regard to the issue involved which is repeatedly arising in several cases, particularly, for admission to various courses and appointment/selection to various posts in Government services, this Bench is of the view that the issue referred has to be answered to resolve the controversy which will guide the Judges while deciding the cases in future.

9. In the application form submitted by the 1st respondent he has filled the relevant column stating as to whether he claims under any reserved category as “No” and he was treated as Open Merit category candidate for appearing in the Entrance Examination. 1st respondent applied for category certificate in June, 1993 through his father before Tehsildar Bhaderwah under SRO 272 of 1982. After conducting local enquiry the Tehsildar submitted his report to the Deputy Commissioner, Doda, who, instead of issuing RBA certificate rejected the application of the 1st respondent for issuance of the certificate on 26.08.1993. The 1st respondent filed appeal before the Divisional Commissioner, Jammu on 03.09.1993, which was allowed on 20.09.1993 and the Deputy Commissioner, Doda issued the certificate on 30.09.1993. Immediately after obtaining the certificate, the 1st respondent made representation to the 2nd appellant on 11.10.1993. During that time the entrance examination alone was over and the merit list/admission list was not published, which is an admitted position. The receipt of the representation along with requisite certificate by the 2nd appellant before finalizing the admission is not disputed. In such circumstances, it has to be seen as to whether not claiming consideration under a reserved category due to non-availability of the certificate issued by the competent authority for which a candidate has applied and after receiving it

has sent it to the competent authority before the selection, has to be treated as a valid ground to claim admission under the reserved category.

10. It is not in dispute that on the date when the application was submitted by the respondent he was residing in a backward area. The enquiry report was submitted by the Tehsildar to the Deputy Commissioner before the last date for submitting the application form that was fixed as 15.09.1993. The Deputy Commissioner erroneously rejected the claim for issuance of certificate on 26.08.1993. The appeal preferred on 03.09.1993 was allowed on 20.09.1993 and certificate was issued on 30.09.1993, which was produced before the 2nd appellant on 11.10.1993.

11. The above undisputed facts clearly reveal that the 1st respondent was not at all at fault and his status as belonging to OBA category on the relevant date of submitting application form is clearly proved. He could not produce the certificate from the competent authority due to the fault committed by the Deputy Commissioner in wrongly rejecting his claim. The said fact and submission of the certificate after his appeal being allowed before the date of finalizing the admission are also not disputed. Hence there is delay in submitting the certificate by the respondent. Whether such delay will disentitle the respondent for considering his claim under reserved category

was already considered by Hon'ble the Supreme Court in the decision reported in **AIR 2004 SC 5043** (Dolly Chhanda v. Chairman, Jee and ors) . In para 7 of the judgment it is held thus:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e, in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature”.

12. The filing of proof for claiming the benefit of reservation, and if the claim is made and proof is produced before finalizing the selection by the selection committee was enough. Hon'ble the Supreme Court in the decision reported in **AIR 1980 SC 1230** (**Charles K. Skaria v. Dr. C.Mathew**) held that the procedure are handmade and not as subservient to substance but as superior to the essence. A similar issue arose in WA No.259/2013 reported in **2013 (4) MLJ 385** (**G. Udhayan v. The Member Secretary**) before a Division Bench of Madras High Court, where a candidate who applied for selection as police constable Grade-

II under Wards Category, who failed to get the service certificate of his father in time and produced it before finalizing the selection was not considered under Wards category. The Division Bench directed to select the writ petitioner therein even though certificate was issued by the department which was produced before finalizing the selection as the candidate claimed selection under Ward Category in the application form. The Division Bench of Delhi High Court in similar circumstances in WP(C) No.13451 of 2009 dated 13.01.2010 held that “..... depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it would not be proper to apply any rigid principle as it pertains to the domain of procedure.”

13. Non production of experience certificate along with the application form of the experience which was gained prior to the last date for submitting the application for the post of Examiner of Trademarks and Geographical Indication, which was produced before selection, was directed to be considered as a valid application by a Division Bench of Madras High Court in the decision reported in 2014(1) MLJ 56 (**Union Public Service Commission v. Registrar Central Administration Tribunal and anr.**)

14. Identical issue arose before Hon'ble the Supreme Court in the decision reported in AIR 2016 SC 1098 (**Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and anr.**). The

question arose was as to whether a candidate who appears in an examination under OBC category and submits the OBC certificate after the last date mentioned in the advertisement notice is eligible for selection to the post under OBC category or not. In the said case the Division Bench of Delhi High Court had reversed the order of the Writ Court in giving direction to consider the writ petitioner for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Government of NCT of Delhi. Though, OBC certificate issued by the appropriate authority was not enclosed along with the application form or submitted before the last date of submission of application form. The Hon'ble Supreme Court set aside the Division Bench judgment and restored the order of the Writ Court by holding that a candidate is entitled to submit a certificate even after the cutoff date fixed in the advertisement if claim was made in the application form. The Hon'ble Supreme Court held that rules of procedure should be interpreted in a manner, bearing in mind the law laid down by Constitution Benches of Hon'ble the Supreme Court reported in **AIR 1993 SC 477 (Indra Sawhney etc. v. Union of India and ors)** and **AIR 1996 SC 1011 (Mrs. Valsammappaul etc. v. Kochin University and others).**

15. A Division Bench of this Court in LPA(OW) No. 51 of 2015 by judgment dated 02.03.2016 (J&K Board of Professinal

Entrance Examinations vs. Sovia Anand and anr) considered as to whether though belonging to the Actual Line of Control (ALC) category, having applied for the certificate, obtained the same and submitted the certificate after the admission list was published for MD/MS/PG Diploma Courses, held that the candidate having not claimed the seat under reserved category and the certificate having been submitted before the selection committee only after making selection, the said candidate is not entitled to get any relief. A Division Bench of this Court in the judgment reported in **2007 (2) JKJ 382 (Surjit Singh Bali vs. State of J&K and ors)** considered a similar issue namely whether the official respondents are bound to entertain and accept the RBA certificate after the cutoff date was over. It was answered that object of making reservation rules is to uplift and upgrade the social backwardness of the people, a candidate belonging to backward area does not lose his right of consideration of reserved category post, if he fails to produce the certificate of his belonging to such category along with his application form, but mentions in the application form that he belongs to such a category.

16. Thus the reference made before this Full Bench is answered in the following manner:-

A candidate must possess the eligibility on the cutoff date and if claims that he/she belongs to a particular category in the

application form and unable to produce the proof/certificate before the cutoff date inspite of his/her best efforts, the said candidate shall be permitted to produce the proof before finalization of the selection for admission/appointment as producing proof is procedural and if no claim is made in the application the candidate cannot be permitted to produce proof of the same and such candidate shall be considered in open merit category.

16. Consequent to our above referred answer to the issue raised, the judgment rendered by the Division Bench in LPA No. 261/1992 (Naresh Singh v. State of J&K and ors) dated 24.11.1993 is no longer a good law and the same is over ruled.

(N. Paul Vasanthakumar)
Chief Justice

(Dhiraj Singh Thakur)
Judge

(B.S.Walia)
Judge

Jammu,
28.04.2016
Anil Raina Secy.